



Klein Hornig <sup>LLP</sup>  
COUNSELORS AT LAW

# **Affordable Housing, Community Development and Affirmatively Furthering Fair Housing**

**Under One Roof Conference**

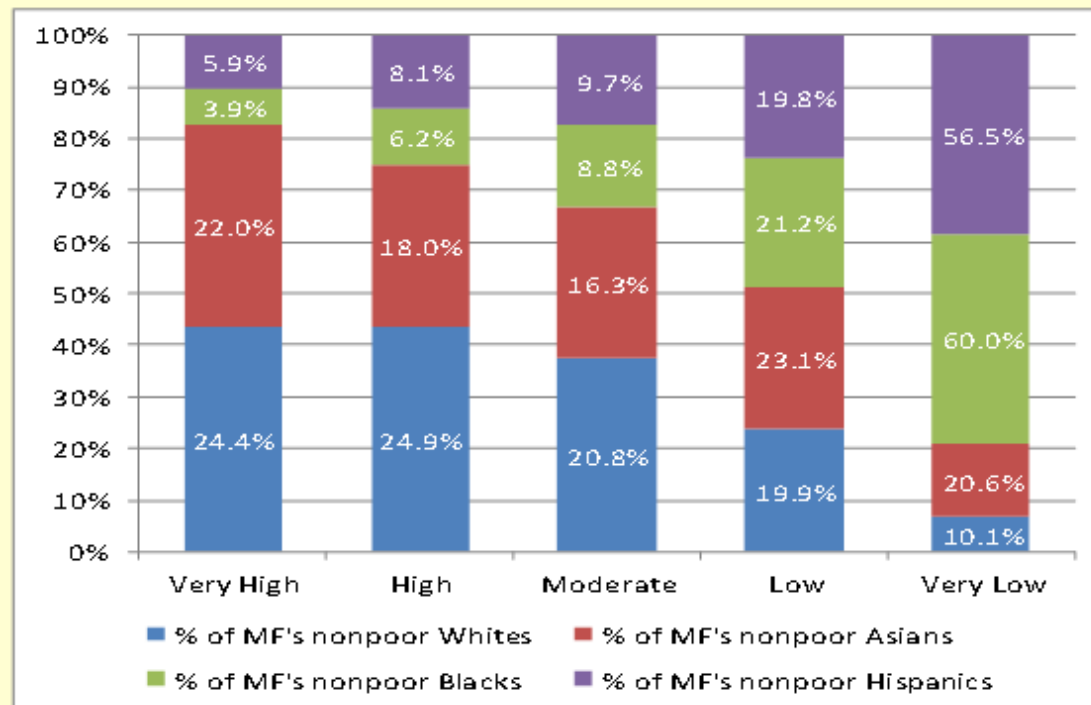
**Massachusetts Department of Housing and Community  
Development**

**November 13, 2012**

Henry Korman

Klein Hornig LLP, Boston, MA

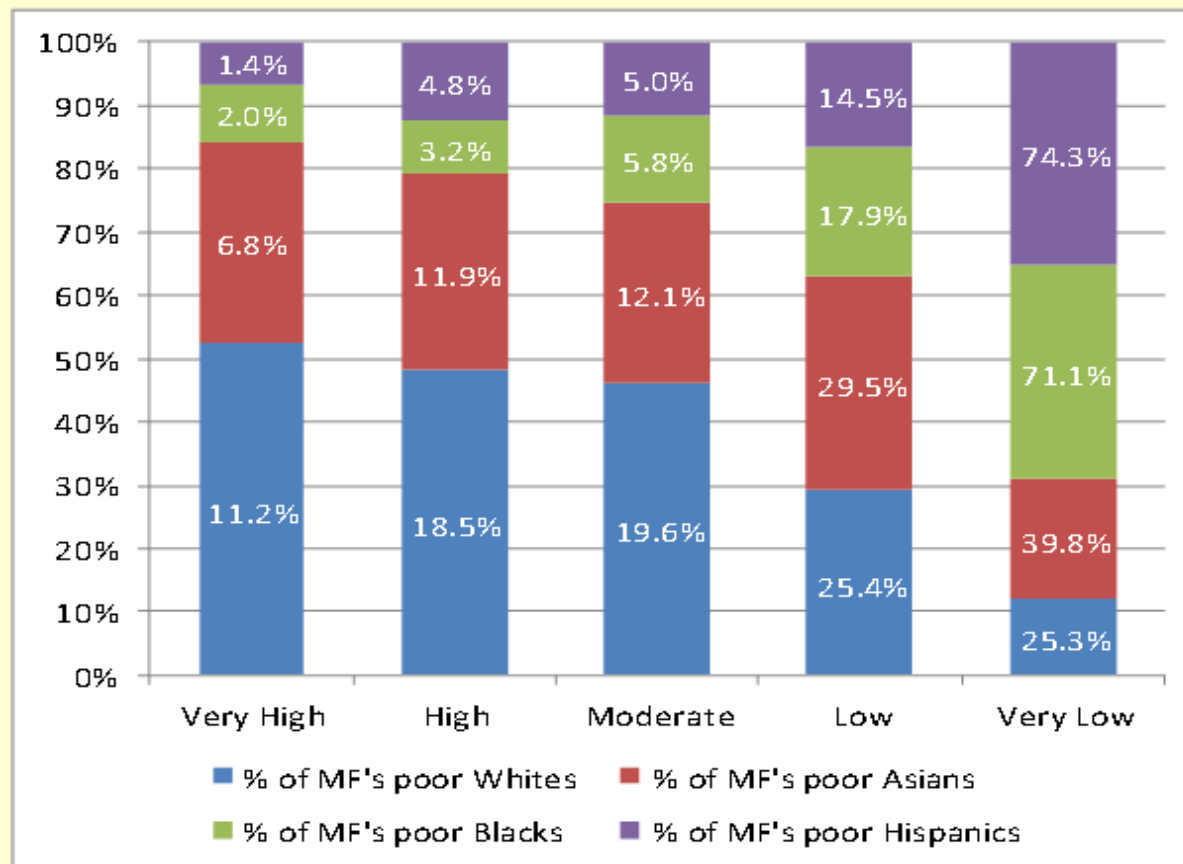
### Distribution of *Non-poor* Residents by Race/Ethnicity in Neighborhoods of Opportunity





## Access to Opportunity: Race or Poverty?

### Distribution of *Poor* Residents by Race/Ethnicity in Neighborhoods of Opportunity





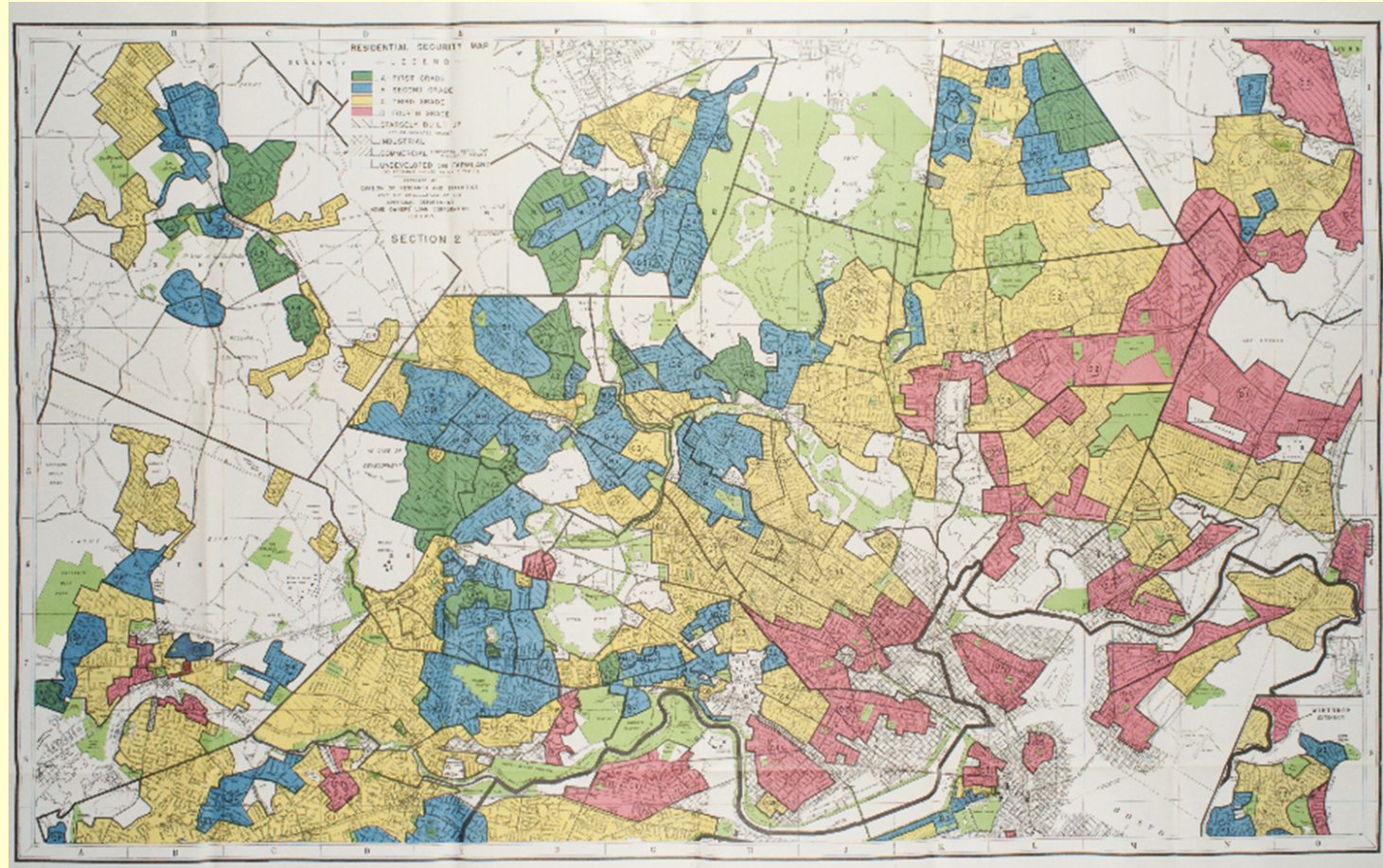
## Housing Programs and the Construction of Segregation: FHA Single Family Mortgage Insurance

**“The massive influence of the Federal Government over the housing industry in the form of direct funding to localities, Federal Housing Administration and veterans Administration mortgage insurance, Federal National Mortgage Association mortgage purchases, the chartering and insurance of private financial institutions and in highway expenditures, in the 1950's and 1960's was not directed toward supplying equal housing opportunities to all the region's citizens. The cities and towns along the 128 perimeter are most deeply indebted to the Federal Government for their suburban quality; they are also indebted to it for the preservation of their all-white character.”**

**"Route 128: Boston's Road to Segregation," *US Civil Rights Commission & MCAD* (January 1975)**

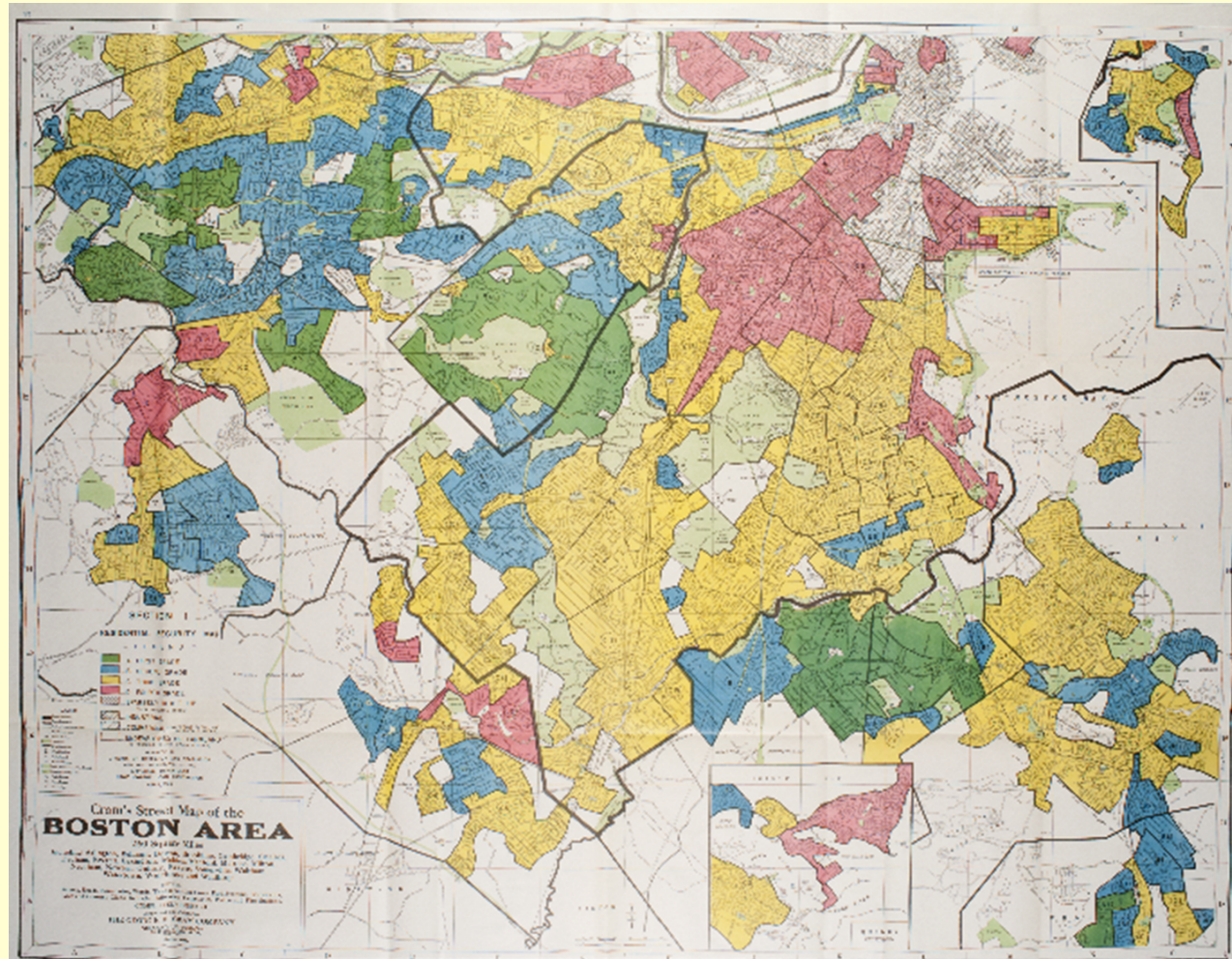


# Housing Programs and the Construction of Segregation: FHA Single Family Mortgage Insurance





# Housing Programs and the Construction of Segregation: FHA Single Family Mortgage Insurance





## Housing Programs and the Construction of Segregation: Public Housing

Housing and civil rights are an integral part of each other. Housing is advanced in the interest of the general welfare and in the interest of strengthening democracy. When you separate civil rights from housing you weaken that general welfare. You weaken the democracy that you pretend to strengthen. Remember, here you launch a 40-year program whereby you deny equal opportunity to housing the 14,000,000 American citizens and to other racial minorities. This attempt to separate civil rights from housing is dishonest political opportunism.

Congressman Vito Marcantonio, June 29, 1949



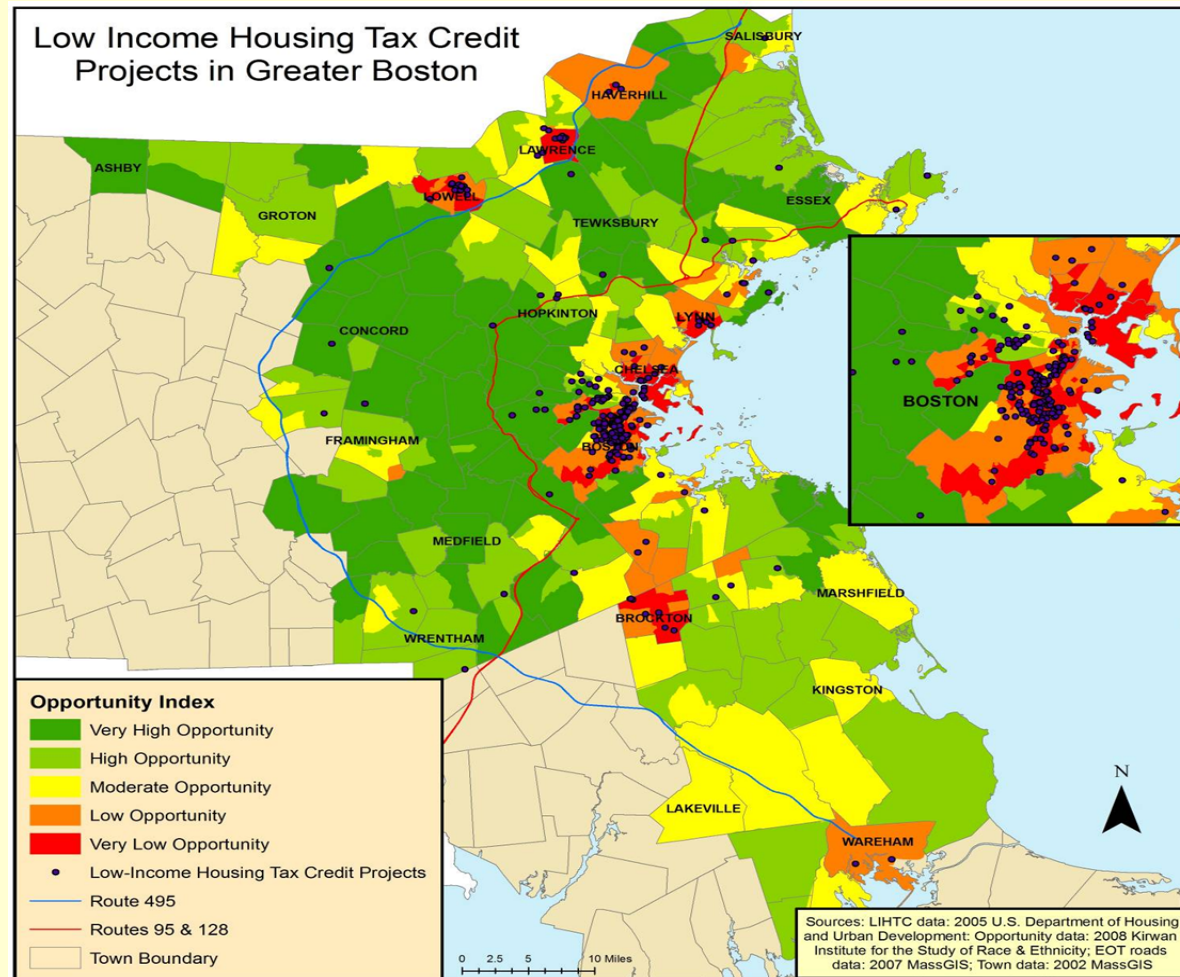
## Housing Programs and the Construction of Segregation: Public Housing

Massachusetts public housing desegregation and discrimination litigation:

- *Weeks v. Waltham Housing Authority*, C.A. No. 76-402-F (D. Mass., Entry of Judgment, July 22, 1977)
- *NAACP, Boston Chapter v. Harris*, 567 F. Supp. 637 (D. Mass. 1983)
- *Gardner v. Quincy Housing Authority*, C.A. No. 82-3873-N (D. Mass., Settlement Agreement, March 25, 1985)



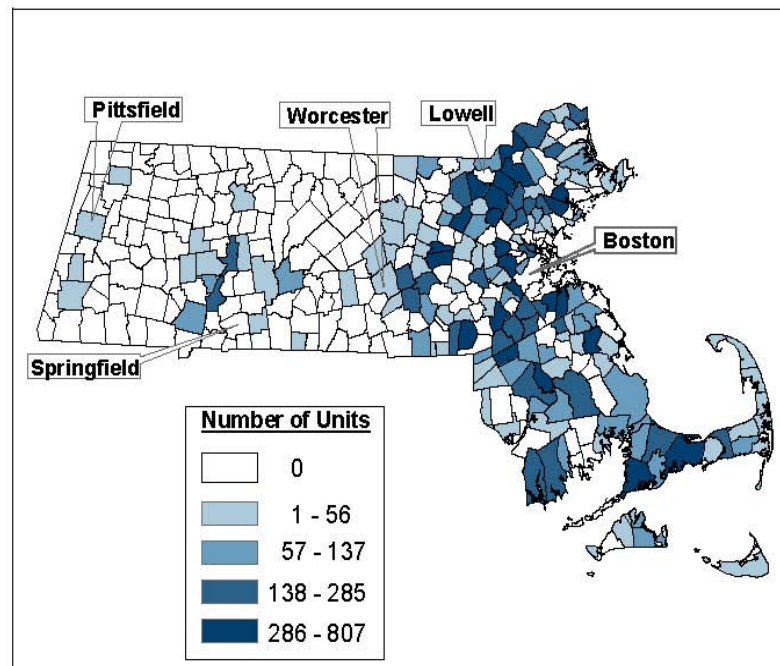
# Housing Programs and the Construction of Segregation: LIHTC





## Housing Programs and the Construction of Segregation: Chapter 40B

Figure 1. Location of Chapter 40B Housing Units Constructed from 2000 to April 2010, by City/ Town



Sources: US Census Bureau, CHAPA Chapter 40B project database



UMass Donahue Institute

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## Report of the National Advisory Commission on Civil Rights (1968)

Three choices are open to the nation:

- We can maintain present policies, continuing both the proportion of the nation's resources now allocated to programs for the unemployed and the disadvantaged, and the inadequate and failing effort to achieve an integrated society.
- We can adopt a policy of "enrichment" aimed at improving dramatically the quality of ghetto life while abandoning integration as a goal.
- We can pursue integration by combining ghetto "enrichment" with policies which will encourage Negro movement out of central city areas.



## Report of the National Advisory Commission on Civil Rights (1968)

- The first choice, continuance of present policies, has ominous consequences for our society.... To continue present policies is to make permanent the division of our country into two societies; one, largely Negro and poor, located in the central cities; the other, predominantly white and affluent, located in the suburbs and in outlying areas.
- The second choice, ghetto enrichment coupled with abandonment of integration, is also unacceptable. It is another way of choosing a permanently divided country. Moreover, equality cannot be achieved under conditions of nearly complete separation.
- We believe that the only possible choice for America is the third-a policy which combines ghetto enrichment with programs designed to encourage integration of substantial numbers of Negroes into the society outside the ghetto.





## Report of the National Advisory Commission on Civil Rights (1968)

### *With Respect to housing:*

**First:** Federal housing programs must be given a new thrust aimed at overcoming the prevailing patterns of racial segregation. If this is not done, those programs will continue to concentrate the most impoverished and dependent segments of the population into the central-city ghettos where there is already a critical gap between the needs of the population and the public resources to deal with them.

**Second:** The private sector must be brought into the production and financing of low and moderate rental housing to supply the capabilities and capital necessary to meet the housing needs of the nation.

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes. *42 USC 3608(d)*

The duty to further fair housing reflects the congressional desire “to fulfill . . . the goal of open, integrated residential housing patterns and to prevent the increase of segregation” and “to assist in ending discrimination and segregation to the point where the supply of genuinely open housing increases.” *NAACP, Boston Ch. v. Secretary of Housing & Urban Development*

Principles to frame a “discussion about the relationship between community revitalization in distressed communities, integrating low-income families into high opportunity areas, and the civil rights imperatives of the Fair Housing Act. These principles are particularly important in the context of the Low Income Housing Tax Credit (Housing Credit) program...”

- “Federal, state and local resources should be distributed in a manner that allows low-income people and people of color to make housing choices that are best for themselves and their families.”
- “[S]tates should include as funding priorities distressed communities that have meaningful community revitalization plans; gentrifying neighborhoods in which investment prevents displacement of low-income residents; and high opportunity areas in which investment allow low-income families to access resources such as good schools, public transportation, open space, and employment opportunities.”
- “Community revitalization plans should include specific plans for strategic partnerships and support from a variety of stakeholders that bring other investments to the area.”

- In order to help foster an appropriate balance... federal agencies and state Housing Credit allocating agencies should develop incentives to overcome barriers and encourage the allocation of Housing Credits for developments serving low income families in high opportunity areas.
- Tools may “include the elimination of local veto or other burdensome approval requirements, [use of] basis boosts, modified cost underwriting guidelines... affirmatively marketing Housing Credit developments, incentivizing developments that serve the lowest income families (including those with project-based vouchers or similar assistance), and ensuring that families with housing choice vouchers can actually access Housing Credit developments.



## DHCD Development Funding Priorities

- **Housing for extremely low-income (ELI) individuals, families, and seniors** earning less than 30 percent of area median income with a particular focus on those who are homeless or at risk of homelessness.
- **Investment in distressed and at-risk neighborhoods** where strategic housing investment has a strong likelihood of catalyzing private investment, improving housing quality, and promoting occupancy at a range of household incomes.
- **Preservation of existing affordable housing** that extends affordability in situations that are consistent with QAP policies and the preservation working group policies...
- **Family housing production in neighborhoods and communities** that provide access to opportunities, including but not limited to, jobs, transportation, education, and public amenities.
- **Additional considerations:** Geographic Balance, Location and Transportation, Community Development Impact